

Summary Report on Tribal Consultation on the Draft Document: *Modernizing Public Hearings for Water Quality Standard Decisions Consistent with 40 CFR 25.5*

U.S. EPA

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**SUMMARY REPORT ON TRIBAL CONSULTATION:
DOCUMENT *MODERNIZING PUBLIC HEARINGS FOR WATER QUALITY STANDARD DECISIONS*
CONSISTENT WITH 40 CFR 25.5**

Purpose

On February 12, 2018, the EPA initiated tribal consultation with all federally recognized tribal governments on the EPA's draft informational document *Modernizing Public Hearings for Water Quality Standard (WQS) Decisions Consistent with 40 CFR 25.5*. This document, when finalized, would provide WQS-authorized tribes and states with some possible technology suggestions consistent with the relevant public hearing requirements in the federal regulations. The following report summarizes consultation actions taken by the EPA and major themes emerging from consultation discussions and letters.

Background

When reviewing or adopting new or revised WQS, WQS-authorized tribes and states are required to hold public hearings in accordance with 40 CFR 25.5 and any other applicable WQS-authorized tribal or state public hearing requirements (CWA sections 303(c)(1), 101(e) and 40 CFR 131.20(b)). Section 25.5 includes requirements for providing notice to the public in advance of a public hearing, establishing times and locations of public hearings, scheduling commenters, conducting the public hearing, and providing a record of the proceedings.

The public hearing requirements at 40 CFR 25.5 were made effective in 1979, prior to the common use of electronic technology such as computers and the Internet. The information provided in the *Modernizing Public Hearings for WQS Decisions Consistent with 40 CFR 25.5* document is intended to help WQS-authorized tribes and states understand suggestions to modernize their public hearing processes consistent with the EPA's public hearing requirements at 40 CFR 25.5. "Modernizing" a public hearing process, or an individual public hearing, for purposes of the document, refers to any use of technology (*i.e.*, computers, the Internet) in preparing for and conducting public hearings. WQS-authorized tribes could maximize opportunities for effective public input to the WQS decision-making process by using the modernization approaches discussed in this document.

Beginning in 2016, the EPA reached out to solicit preliminary input from the National Tribal Water Council (NTWC). The goal of this outreach was for the EPA to identify potential tribal implications and concerns in the event the EPA pursued this document. This preliminary input was solicited prior to developing the draft modernization document.

The EPA initiated the tribal consultation period on February 12, 2018. The consultation period closed on April 20, 2018. The EPA held one informational webinar for federally recognized tribal governments on March 15, 2018. The EPA announced the tribal consultation opportunity by mailing a letter to all federally recognized tribal governments and by sharing information about the opportunity to consult on this action during: a meeting with the United South and Eastern Tribes, Inc. on February 6, 2018, a NTWC meeting on February 14, 2018, and an EPA Tribal Program Managers meeting on February 15, 2018.

All federally recognized tribes were invited to participate in consultation. Twenty-one (21) tribes and one (1) tribal association participated in the March 2018 informational webinar. See Appendix A for a full list of tribes who participated in tribal consultation, including the informational webinar. The EPA

received one (1) written comment as part of the tribal consultation process from the Confederated Tribes of the Warm Springs Reservation of Oregon.

Comments from Consultation Webinar and Written Letter

1. During the March 2018 informational webinar, participating tribes were generally supportive of this document. No substantive comments were received during the webinar. In addition, the Confederated Tribes of the Warm Springs Reservation of Oregon, in its written comments, specifically identified that “[p]romoting the use of modern technology also appears to be a positive step forward.”
2. Written comment encouraging the EPA to respect each tribe’s right to make their own decision concerning if and how to incorporate technology into a public hearing.
 - Outcome: The EPA agrees with this comment. The document makes clear that a WQS-authorized tribe has the discretion to modernize its public hearing process, to the extent it deems appropriate on a case-by-case basis; and while incorporating technology may have advantages, WQS-authorized tribes are not required to do so. The document does not impose legally binding requirements on tribes. Therefore, no additional changes were made to the document.
3. Written comment regarding “how following this guidance will serve to satisfy obligations in the CFRs or whether supplanting traditional notice and hearing methods may create legal risk for WQS-authorized tribes.”
 - Outcome: The purpose of this document is to identify potential suggestions or WQS-authorized tribes and states to use technology consistent with the relevant public hearing requirements in 40 CFR 25.5. The document makes clear that it does not impose legally binding requirements on WQS-authorized tribes nor does it change or substitute for any CWA provision or EPA regulations. As such, no changes were made to the document.
4. Written comment regarding effectiveness of new technology in comparison to traditional methods.
 - Outcome: The document makes clear that WQS-authorized tribes have the discretion to decide whether and to what extent to use technology, as appropriate. As stated in the disclaimer, the suggestions provided to modernize a public hearing are intended to be evaluated by the WQS-authorized tribe to determine if the suggestion is appropriate for a situation depending on the individual circumstances. The document outlines various suggested factors to consider that may assist WQS-authorized tribes in their decision regarding whether to and how to modernize public hearings. As such, no changes were made to the document.

The final document can be viewed at: <https://www.epa.gov/wqs-tech/options-modernizing-public-hearings-water-quality-standard-decisions-consistent-40-cfr-255>. The official EPA contact person for this document is Menchu Martinez, Office of Science and Technology, Office of Water. Please do not hesitate to contact her, via email at martinez.menchu-c@epa.gov or by phone at 202-566-1218, should you have any questions.

Appendix A
Tribal Governments, Associations, and Consortiums Participating in Consultation

Tribe/Organization Name	Type of Participant	Informational Webinar	Individual Consultation	Consultation Letter Submitted
Choctaw Nation of Oklahoma	Government	Yes	No	No
The Confederated Tribes of the Warm Springs Reservation of Oregon	Government	No	No	Yes
Coquille Indian Tribe	Government	Yes	No	No
Cowlitz Indian Tribe	Government	Yes	No	No
Kaw Nation	Government	Yes	No	No
Keweenaw Bay Indian Community	Government	Yes	No	No
Lac Du Flambeau Band of Lake Superior Chippewa Indians	Government	Yes	No	No
Little River Band of Ottawa Indians	Government	Yes	No	No
Morongo Band of Mission Indians	Government	Yes	No	No
Muscogee (Creek) Nation	Government	Yes	No	No
Navajo Nation	Government	Yes	No	No
Norton Sound Health Corporation	Association	Yes	No	No
Peoria Tribe of Indians of Oklahoma	Government	Yes	No	No
Ponca Tribe	Government	Yes	No	No
Pueblo de San Ildefonso	Government	Yes	No	No
Pueblo of Acoma	Government	Yes	No	No
Pueblo of Santa Ana	Government	Yes	No	No
Red Cliff Band of Lake Superior Chippewa	Government	Yes	No	No
Sac and Fox Nation of MO in KS and NE	Government	Yes	No	No
Saginaw Chippewa Indian Tribe of Michigan	Government	Yes	No	No
Santo Domingo Tribe	Government	Yes	No	No
United South and Eastern Tribes Inc.	Association	Yes	No	No